



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00287-CR

EX PARTE John David HODGES

Habeas Corpus Proceeding¹

PER CURIAM

Sitting: Luz Elena Chapa, Justice
Irene Rios, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: June 24, 2020

HABEAS CORPUS MOTION DENIED

On May 29, 2020, relator filed a pro se “Habeas Corpus Motion for Automatic Reversal of Magistrate[‘s] Decision Based on Supreme Court Ruling [sic] Structural Error.” Relator contends he was deprived of counsel at his 2018 “article 15.17 hearing” before a magistrate. Relator asks this court to reverse the magistrate’s probable cause finding and direct his immediate release from restraint and custody. For the reasons below, we deny the “motion.”

The Texas Code of Criminal Procedure requires that an individual who has been arrested be taken before a magistrate who “shall inform in clear language the person arrested . . . of his right to retain counsel . . .” TEX. CODE CRIM. PROC. art. 15.17(a). “The magistrate shall also

¹ This proceeding arises out of Cause No. 2018CR12023W, styled *The State of Texas v. John David Hodges*, pending in the 175th Judicial District Court, Bexar County, Texas, the Honorable Catherine Torres-Stahl presiding.

inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel [and] of the procedures for requesting appointment of counsel." *Id.*

Although article 15.17 requires a magistrate to inform a person of his right to counsel, there is no statutory requirement that counsel be present *during* the 15.17 hearing. The Texas Court of Criminal Appeals has stated:

. . . As to the [article 15.17 hearing], we can hardly imagine a reason to require counsel to be present for the mere dispensation of warnings of the rights of the accused The warnings themselves serve as a prophylaxis, to make sure at a stage of the proceedings at which the accused is not yet likely to have an attorney present that he is nevertheless informed of his Fifth Amendment rights to remain silent and to obtain the presence of a lawyer as a condition of any submission to questioning by authorities. It would be odd indeed to require the presence of counsel at this event.

See Green v. State, 872 S.W.2d 717, 721 (Tex. Crim. App. 1994) (per curiam).

Article 15.17 also requires that

[a] record of the communication between the arrested person and the magistrate shall be made [and] shall be preserved until the earlier of the following dates: (1) the date on which the pretrial hearing ends; or (2) the 91st day after the date on which the record is made if the person is charged with a misdemeanor or the 120th day after the date on which the record is made if the person is charged with a felony."

TEX. CODE CRIM. PROC. art. 15.17(a).

With regard to the record, the *Green* Court stated: "We cannot say that anything that occurred at appellant's [15.17 hearing] required the aid of counsel to cope with any legal problem or assist in meeting the prosecutorial adversary." *Green*, 872 S.W.2d at 721. Here, relator did not provide this court with a "record of the communication between the arrested person and the magistrate." *See* TEX. R. APP. P. 52.7(a)(1) (requiring relator to file "a certified or sworn copy of every document that is material to the relator's claim for relief and that was filed in any underlying proceeding"). Therefore, the record before us is not sufficient to determine whether relator needed the assistance of counsel at his 15.17 hearing. Furthermore, even if relator needed counsel at his

15.17 hearing and was deprived of that right, he had an adequate remedy at law by raising this complaint before the trial court or in an appeal from his 2018 conviction.

CONCLUSION

For the reasons stated above, this court concludes relator is not entitled to the relief sought. Accordingly, relator's "motion" is denied. *See* TEX. R. APP. P. 52.8(a).

Liza A. Rodriguez, Justice

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